

Tim Atiba Ward

8-19-2017

Docket # 17-cv-5248

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Enclosed is documentation involving my claim of my family's rights being violated, ie: 4th Amendment 5th Amendment, 14<sup>th</sup> Amendment and ~~the~~ New York Const. Art 1 § 12

1) The false document I was made to sign during my arrest that stated why my wife's truck was being seized. Document provided by Officer Harrel #1237

2) Points from my suppression ~~hearing~~ Motion that I put together involving the illegal search and seizure pursuant to the law.

Very truly yours

242

P.S am sending D.A's response, Police Report, and Grand Jury minutes next week. All documents substantiate my claim



ORANGE COUNTY DISTRICT ATTORNEY  
40 MATTHEWS STREET, GOSHEN, NEW YORK 10924  
TEL: 845-291-2050 • FAX: 845-291-2085

17-CV-5248 (cm)

To be completed by police:

Date: 4/20/2017

Title Holder: Ward, Jessica M.  
Address: 41 Woodlake Drive  
Middletown, NY 10940

Make/Model: 2011 Ford Explorer  
VIN#: 1FMHK8F83BG A74804

Registered To: Ward, Jessica M.  
Address: 41 Woodlake Drive  
Middletown, NY 10940

Operator: Ward, Jmin  
Address: 41 Woodlake Drive  
Middletown, NY 10940

Lienholder:  
Address:

Arresting Agency: City of Middletown  
Blotter/Case#: 17-13049/17-2073

**YOUR VEHICLE HAS BEEN SEIZED BY THE POLICE AND IS  
SUBJECT TO FORFEITURE PURSUANT TO CPLR ARTICLE 13-A**

Officers have seized the above motor vehicle operated by a person arrested for: a violation of NYS VTL §§ 1192.2, 1192.2-a, 1192.3, 1192.4, or 1192.4-a, when the person has a prior conviction within the past 10 years for VTL §§ 1192.2, 1192.2-a, 1192.3, 1192.4 or 1192.4-a; a violation of NYS Penal Law §§ 120.03, 120.04, 120.04-a, 125.12, 125.13, or 125.14; or another felony level offense under the Penal Law where the vehicle was used as the instrumentality of the crime. ??

The police cannot give you legal advice. The law permits the seizure of vehicles that are owner-operated, non-owner operated, owned by a company, or leased, or that have liens on them.

You have a right to a promptly scheduled hearing before a Superior Court Judge, to determine whether the above motor vehicle should be retained in official custody, where the District Attorney as Claiming Authority must prove that probable cause existed for the defendant's warrantless arrest; that there is a substantial probability that the Claiming Authority will prevail on the issue of forfeiture; that failure to order retention of the vehicle may result in the property being destroyed, removed from the jurisdiction of the court, or otherwise be unavailable for forfeiture; and that the need to preserve the availability of the property through retention of the vehicle outweighs the hardship on any person against whom retention may operate.

Your hearing is scheduled for 05/01/2017, at 9:00 Am, at the Orange County Courthouse, 285 Main Street, Third Floor, Goshen, New York. Innocent Owners have a right to appear and present evidence of their innocence of any crime as a defense to seizure and forfeiture of the vehicle.

If you have questions about the forfeiture action involving the motor vehicle, you may contact the Director of Asset Forfeiture, Orange County District Attorney's Office, at the address and phone number above. If you need legal advice, you may consult an attorney. **Please be aware that the District Attorney's Office cannot give you legal advice about any matter, and cannot discuss with you any criminal matter in which you are a defendant. You must fill out the bottom of this page to ensure proper notification regarding your vehicle.**

X J.M.W

Defendant's acknowledgement of receipt

P.O. E. Hargett #237

Name of Arresting Officer (Please Print)

Operator Information: To be completed by vehicle owner/operator:

Name: <u>Ward</u>	First Name, <u>Jmin</u>	Middle Initial, <u>A.</u>	Date of Birth: <u>4/20/81</u>
Last Name, <u></u>			xx/xx/yyyy
Address: <u>41 Woodlake Dr. Middletown</u>		Apt: _____	
City: <u>Middletown</u>		State: <u>NY</u>	Zip Code: <u>10940</u>
Home Phone: (____)		Cell Phone: (____)	Work Phone: (____)

**RELEASE OF VEHICLE SEIZED****46. Middletown Police Department and Orange County Sheriff's Office**

Special Operations Group (SOG), exceeded their jurisdiction and authority seizing unauthorized property not specified in the warrant application or warrant itself. Middletown Police Department covered up the seizure of property with a falsifying 13-a forfeiture "instrumentality of a crime" proceeding. Further exceeding jurisdiction and authority by seizing property pertaining to a 13-a proceeding and not going through the proper requisites

47. This gross abuse of power with the excess of their jurisdiction constitutes an illegal, unreasonable and unconstitutional search and seizure. The unlimited discretion and deviation from authorized search/seizure is one of the principle evils in how the 4<sup>th</sup> amendment was enacted. Defendant moves to suppress any and all evidence obtained during the illegal and unconstitutional search and seizure execution.

48. Defendant's wife's vehicle described in warrant to be searched, was seized unlawfully after it was searched and found to be negative for any contrabands. Defendant was provided with a false 3-a forfeiture claim. None of the mandated requisites were exhausted under this claim by the authorities. CPLR 1311 (2) includes the right to trial by jury on issue of fact.

49. CPLR 1311 (1)(b)- Actions related to a pre-conviction forfeiture...shall be necessary in the action for the claiming (DA) authority to prove the pre-conviction forfeiture crime by clear and convincing evidence.

complaint.

service pursuant to 13-a of a summons with notice or summons and verified

54. CPLR 1311 (5)- An action for forfeiture shall be commenced by  
superior court in which the forfeiture action is pending.

53. CPLR 1311 (4)(c)- An application must be brought exclusively in  
action...defendant may apply for order dismissing complaint.

52. CPLR 1311 (4)(a)- At any time during the pendency of a forfeiture  
dismiss said action in the interest of justice upon its motion or upon  
application.

51. CPLR 1311 (4)- The court in which a forfeiture action is pending may  
convincing evidence.

authority against a criminal defendant...must be proven by clear and  
50. CPLR 1311 (3)(a)- In a forfeiture action commenced by a claiming  
court # 17 CV 5248 (cm)

Orange County Jail

110 Wells Farm Road

Goshen NY 10924

Name:

J. min Ward

ID#: 2017-01851

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Aug 28 2017

Aug 28 2017

United States District Court

United States of New York

Southern District of New York

Mr. Daniel Patrick Moynihan

The Daniel Patrick Moynihan

United States Courthouse

500 Pearl Street

US Courthouse - 500 Pearl Street

New York NY 10007

ADDITIONAL JUDGE USA  
FOREVER USA

Barn Swallow

P.O. Se  
SM

U.S. POSTAL SERVICE

Barn Swallow

Barn Swallow

the defendants Fourth, Fifth and Fourteenth Amendment of U.S. pursuant to 2-10 (25), illegally seized the vehicle in question which violates Office Special Operations Group (SOG), which consists of peace officers vehicle. Middletown Police and members of the Orange County Sheriff's the application for warrant or warrant does not specify in nature to seize 57. All Requisite procedures pertaining to CPLR 13-a were not filed and

(DA) authority shall have the right to possession of the subpoena material. affidavit. CPLR 1311-a (3) when a subpoena has been issued the claiming action pursuant to this article. CPLR 1311-a (2)(b) shall be supported by an made in judicial district in which the claiming authority may commence an motion. CPLR 1311 (2)(a) subpoena duces tecum (2)(a) subpoena shall be property in question before judgment on 13-a action must be made by a 56. Per section 13-a pursuant to pre-conviction forfeiture, any seizure of narcotics court of New York City under Judiciary Law 177(b).

case of an action commenced by the office of prosecution, the special is (b) the county where a criminal prosecution could be commenced...in CPLR 1311 (10). The proper venue for trial of an action for forfeiture narcotics 17 case 5248 (EM)

469 U.S. 17, 19-20, 105 S. Ct. 409, 83 L. Ed. 2d 246, "Plain View" doctrine.  
2d 106, 110, 595 N.Y.S. 2d 940, 612 N.G.2d 298, *Thompson v. Louisiana*.  
subject to several narrow, well-defined exceptions, *People v. Diaz*, 81 N.Y.  
individual's property without obtaining a warrant is per se unreasonable,  
prohibited under the U.S. Constitution Fourth Amendment. The seizure of an  
Sheriff's Office (SOG) constitutes an "unreasonable search and seizure",  
59. Actions of the Middletown Police Officers and the Orange County  
74, 72 L. Ed. 2d 1] *People v. Brown*, 725 N.Y.S. 2d 601 (Ct App. 2001).  
2737, 49 L.Ed.2d 627; *Marton v. United States*, 275 U.S. 192, 48 S. Ct.  
N.E.2d 596, [Citing *Anderson v. Maryland*, 427 U.S. 463, 480, 96 S. Ct.  
executing officer *People v. Darling*, 95 N.Y. 2d 530, 720 N.Y.S. 2d 82, 742  
warrants directive must be "specific enough to leave no discretion to the  
the ... items to be seized". To meet the particularity requirement, the  
shall issue except those "particularly describing the place to be searched, and  
58. The Fourth Amendment of the Constitution specifies that no warrants  
violating CPL § 690.20 and CPL § 2.20 (c).  
Constitutional rights. Officers and peace officers used unlimited discretion

60. Plain view doesn't apply here because warrant specified vehicle to be searched which rendered negative results for contrabands found. Therefore, officers did not inadvertently come across it. Seizure of the vehicle Constitution as made applicable to the states Fourteenth Amendment and article 1, §12 of our New York Constitution, speaks with one voice in requiring that warrants "particularly describe...the items...to be seized". People v. Mothersell, 900 NYS 2d 715, (Ct. App 2010).

61. A search warrant exists and is required not simply to permit but to circumscribe police intrusions People v. Mothersell, 900 NYS 2d 715, (Ct. App 2010) Maron v. United States, 275 U.S. 192:196, 48 S. Ct. 74, 72 L. Ed. 231 "Nothing is left to the discretion of the officers executing the Fourteenth Amendment was directed for, unlimited discretion to searching officers. The directions contained in the warrant as to the place, person and items must be clear. Middletown Police and Orange County Sheriff's Office Special Operations Group (SOG) which consisted of peace officers pursuant to the Fourteenth Amendment is required to avoid one of the principle evils at which the specificity is required to avoid one of the principle evils at which the warrant".

62. Specificity is required to avoid one of the principle evils at which the Fourteenth Amendment was directed for, unlimited discretion to searching officers. The directions contained in the warrant as to the place, person and items must be clear. Middletown Police and Orange County Sheriff's Office Special Operations Group (SOG) which consisted of peace officers pursuant to the Fourteenth Amendment was directed for, unlimited discretion to searching officers. The directions contained in the warrant as to the place, person and items must be clear. Middletown Police and Orange County Sheriff's Office

63. Middletown Police and members of the SOG did not comply with the terms of the authorized warrant that Hon. Judge Brockett issued and addressed directly to the police officers and peace officers of the SOG members in violation of CPL §690.05, CPL §690.25, CPL §690.35, U.S. Const. Amend 4, U.S. Const. Amend 5, U.S. Const. Amend 14 and New York State Const. Art. I §12, CPL §690.20 (2) and CPL §2.20 (c). The substantial deviation from these respectful statutes constitutes an illegal search and seizure. All evidence obtained during an unconstitutional and illegal search and seizure is not admissible in state courts. *Mapp v. Ohio*, 367 U.S. 643, 81 S. Ct. 1684, 6 L. Ed. 2d 1081 - a search and seizure can it be tolerated under our constitutional system. *Dyer v. United States*, 64. CPL §690.20 (2) mandates searching officers to execute warrant according to authorized terms and directions in the warrant. Unlawful and

367 U.S. 643, 81 S. Ct. 1684, 6 L. Ed. 2d 1081.

and illegal search and seizure is not admissible in state courts. Mapp v. Ohio,

searches and seizures. Any and all evidence obtained during an unconstitutional

enacted - to protect citizens from illegal, unreasonable and unconstitutional

abuse of power is one of the principle evils why the Fourth Amendment was

(2) subpoena duces by court in which proceeding is taking place. This gross

of property during a 13-a proceeding by way of granting motion, CPLR 1311-2

property was seized. While 13-a forfeiture proceedings only authorize seizure

warrant or warrant itself and using a 13-a forfeiture form to conclude why

authority when seizing property (vehicle) not included in application for

66. Middletown Police Department and SOG exceeded their jurisdiction and

judgment and during the proceedings of a 13-a forfeiture.

(2) subpoena duces which is required for any seizure of property before a

65. There was not a 13-a proceeding. Further, there was no CPLR 1311-a

strategem of using a 13-a forfeiture announcement.

unreasonable seizure of property cannot be overcome by the simple